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Office of the Director
Group 3600

Ralph E. Jocke
231 South Broadway
Medina, OH 44256

In re application of
James A. Michael, et al.
Application No. 09/384,650
Filed : August 27, 1999
For: METHOD FOR DISPENSING
MEDICAL ITEMS

DECISION ON PETITION FOR
HOLDING OF DEFECTIVE
APPEAL BRIEF

This is in response to applicants' petition received July 11, 2001 requesting withdrawal of the holding of defective appeal brief. This petition will be treated as a petition to invoke the supervisory authority of the Director of the United States Patent and Trademark Office (USPTO) under 37 CFR 1.181.

On April 23, 2001, petitioner timely submitted an appeal brief. The examiner mailed a notice of defective appeal brief on July 5, 2001. The sole reason given for holding the brief as defective was the length thereof. Petitioner filed the instant petition on July 11, 2001 requesting that the notice of defective brief be withdrawn as being based on an erroneous assertion that is contrary to USPTO policy regarding the standards that must be met when filing appeal briefs before the Board of Patent Appeals and Interferences (BPAI).

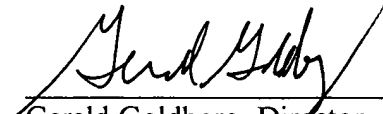
The petition is **GRANTED**.

An appeal to the BPAI is not an appeal to an Article III federal court of appeal. An appeal to the BPAI is an administrative proceeding provided in title 35 of the United States Code and title 37 Code of Federal Regulations. Although there are page limits provided in federal rules for appellate procedures within federal courts (Article III Courts), they do not apply to appeal briefs submitted to the BPAI.

37 CFR 1.943(c) provides for a page/word limit on briefs in *inter partes* reexamination proceedings. 37 CFR 2.128(b) also provides for express page limits of main briefs and reply briefs submitted to the Trademark Trial and Appeal Board. No such express language is provided elsewhere in title 35 of the United States Code and title 37 Code of Federal Regulations for a page/word limit on briefs in *ex parte* application or reexamination proceedings to the Board of Patent Appeals and Interferences. By negative implication, there is no such limit during *ex parte* application or reexamination proceedings.

Therefore, the notice of defective appeal brief of July 5, 2001 is hereby vacated and the appeal brief submitted on April 23, 2001 is deemed to be appropriate under 37 CFR 1.192.

The application will be forwarded to the assigned examiner for prompt consideration of the brief and preparation of an examiner's answer.



Gerald Goldberg, Director
Technology Center 3600
Telephone No.: (703) 308-1134
Facsimile No.: (703) 308-2177

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